

In view of this very clear provision we did not think that we have jurisdiction to entertain this appeal.

Mr. Khoo for the appellant conceded, and we think rightly, that if this was a civil appeal this court would have no jurisdiction, but he sought to argue that the court might regard this, not as a civil but rather as a quasi-criminal appeal, similar to an appeal from a maintenance order and that in that event this court would have jurisdiction. With respect we could not agree. In our opinion, the decision appealed from is clearly "a judgment or order of any High Court in any civil matter" within the meaning of section 67 of the Courts of Judicature Act and therefore governed by section 68 thereof.

We ordered the appellant to pay costs which we assessed at only \$100 in view of his special character.

Appeal struck off.

Solicitors: *Shearn, Delamore & Co.; Athi Nahapan & Co.*

PUBLIC PROSECUTOR v. NASIR

[R.Cr.J. (Abdul Hamid J.) May 9, 1972]

[Kuala Lumpur — Selangor Criminal Revision
No. 9 of 1971]

Road Traffic — Breach of statutory requirement — Failure to display "L" plates on motor vehicle — Effect on policy of insurance — Disqualification from driving — Road Traffic Ordinance, 1958, s. 74(2).

This was an application by the learned magistrate, Kuala Lumpur, for revision.

The respondent was convicted under the provisions of the Road Traffic Ordinance, 1958, for riding a motor cycle and failing to display 'L' plates, and also for having no insurance cover in respect of third party risks. He was fined \$50 on the first charge and \$150 on the second charge and was disqualified from driving for one year.

The learned magistrate stated that he had realised that he was wrong in making the ruling that the insurance policy was ineffective. He, therefore, sought a ruling on whether or not a learner driver in possession of a valid insurance policy against third party risks in respect of the motor vehicle and who drives his motor vehicle while in possession of a valid provisional driving licence but who fails to display 'L' plates as required by rule 16(c) of the Motor Vehicle (Driving Licence) Rules, 1959, is guilty of an offence under section 74(1), punishable under section 74(2) of the Road Traffic Ordinance, 1958.

Held: by the respondent's failure to display the 'L' plates as required by rule 16(c) of the Motor Vehicle (Driving Licence) Rules, 1959, he committed a breach of one of the conditions attached to the learner's licence and he should therefore be disqualified by the rule in that behalf from driving. Consequently, he committed an offence under section 74(1) of the Road Traffic Ordinance, 1958, in using the said vehicle without there being in force a policy of insurance in respect of third party risks. Therefore, he was rightly convicted.

Cases referred to:-

(1) *Tan Kwang Chin v. Public Prosecutor* [1959] M.L.J. 252.

(2) *Public Prosecutor v. Albert See* [1971] 1 M.L.J. 47.

REVISION.

Sharkawi Alias (Deputy Public Prosecutor) for the Public Prosecutor.

Respondent absent.

Abdul Hamid J. (delivering oral judgment): This is an application by the magistrate, Kuala Lumpur, for revision. The respondent was convicted on the following charges—

"1. That you on 25.5.71 at about 9.00 p.m. at Persiaran Gurney, Kuala Lumpur, being the rider of motor cycle BJ. 5417 and holder of a provisional driving licence did fail to comply with one of the conditions subject to which it was granted, to wit, did fail while the said vehicle was being ridden by you to clearly display in a conspicuous position on the front and on the back of the vehicle 'L' plates as prescribed, contrary to Rule 16(c) of the Motor Vehicle (Driving Licence) Rules, 1959 and that you have thereby committed an offence under section 28(4) of the Road Traffic Ordinance 1958 and punishable under section 146(1) of the said Ordinance.

2. That you on the same time, date and place being the rider of motor cycle BJ. 5417 did use the said vehicle on the road without there being in force in relation to the user of such vehicle by yourself a policy of insurance in respect of third party risks as complies with the requirement of the Road Traffic Ordinance, 1958 and that you have thereby committed an offence under section 74(1) of the Road Traffic Ordinance, 1958 and punishable under section 74(2) of the said Ordinance."

The respondent was fined \$50 on the first charge and \$150 on the second charge and he was also disqualified from driving for one year.

It is stated by the magistrate that upon reflection, he had realised that he was wrong in making the ruling that the insurance policy was ineffective. He therefore seeks a ruling on whether or not a learner driver in possession of a valid insurance policy against third party risks in respect of the motor vehicle and who drives his motor vehicle while in possession of a valid provisional driving licence but who fails to display "L" plates as required by rule 16(c) of the Motor Vehicle (Driving Licence) Rules, 1959 is guilty of an offence under section 74(1) punishable under section 74(2) of the Road Traffic Ordinance, 1958.

The magistrate referred to the case of *Tan Kwang Chin v. Public Prosecutor*⁽¹⁾ whereby, he said, the court held to the effect that a driver who had an expired provisional driving licence is still covered by the terms of his insurance policy. The magistrate believes that he is bound by that decision. With respect, I think the magistrate has misconstrued the decision in *Tan Kwang Chin v. Public Prosecutor*, *supra*. In that case, the appellant was convicted for driving a car without a driving licence. At that time, the appellant's provisional driving licence had already expired. The car that was driven by him belonged to a friend and he drove it with the express permission of his friend. The appellant was also convicted for driving without being covered by insurance policy in respect of third party risks.

The policy authorised the following persons to drive the vehicle—

- (a) The insured.
- (b) Any other person who is driving on the insured's order or with his permission—

Provided that the person driving is permitted in accordance with the licensing or other laws or regulations to drive the motor vehicle or has been so per-

mitted and is not disqualified by order of a court of law or by reason of any enactment or regulation in that behalf from driving the motor vehicle.

On appeal, the appellant was held to be rightly convicted on the first charge but as for the second charge, the appellate judge held that—

“As the appellant was driving the car with the permission of the policy holder he was within the category of persons who ‘has been so permitted and is not disqualified by order of a court of law or by reason of any enactment or regulation in that behalf for driving a motor vehicle’.”

In the present case the policy authorised only “the policy holder” to drive. There is a similar proviso as hereinbefore mentioned attached to it.

The policy holder, that is, the respondent, drove the motor cycle without displaying “L” plates as required by rule 16(c) of the Motor Vehicle (Driving Licence) Rules, 1959. It is clear that rule 16(c) is one of the conditions attached to the learner’s licence. Therefore it would appear that by the respondent’s failure to display the “L” plates as required by rule 16(c) of the said rules he committed a breach of one of the conditions attached to the learner’s licence and should therefore be disqualified by the rule in that behalf from driving. Consequently he committed an

A offence under section 74(1) of the Road Traffic Ordinance, 1958 in using the said vehicle on the road without there being in force in relation to the user of such vehicle a policy of insurance in respect of third party risks. He was therefore rightly convicted. (See *Public Prosecutor v. Albert See*,⁽²⁾ per Wee Chong Jin, C.J.).

B The learned judge in *Tan Kwang Chin’s* case did not seem to have considered this point. It is also apparent that in *Tan Kwang Chin’s* case the offence was committed on April 22, 1959, that is, before the coming into force of the Motor Vehicle (Driving Licence) Rules, 1959 (effective from 1st July 1959). In my view *Tan Kwang Chin’s* case cannot be regarded as an authority to support the contention that a driver who had an expired provisional driving licence is still covered by the terms of his insurance.

C The magistrate in imposing this disqualification has not stated quite clearly whether or not he should be disqualified from holding or obtaining a driving licence. The proper order should be to disqualify him from holding or obtaining a driving licence for a period of one year.

Order accordingly.